IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.616 OF 1994

Pradeep L. Pathak ...Petitioner
vs.
Mahatma Gandhi Memorial
Hospital & anr. ...Respondents

Mr.P.M.Patel for the petitioner
Mr.Verma i/b Mr.Rajesh Gehani for the respondents

CORAM: SMT.RANJANA DESAI & A.S.OKA,JJ.
DATE : DECEMBER 13,2005

JUDGMENT:

1. The petitioner was an employee of Mahatma Gandhi Memorial hospital, first respondent herein. First respondent is a hospital set up under the Employees State Insurance Act, 1947. The second respondent is the body corporate constituted under the provisions of the Employees State Insurance Corporation Act, 1947 which according to the petitioner forms part of a Government body. The third respondent is the State of Maharashtra.

2. The petitioner is a graduate from Bombay University. According to him since there was a vacancy for the post of Junior Personnel Officer, he applied for the same and was called for interview on 11th December 1991. He was interviewed and declared successful. In the appointment order dated 14/23-12-1991 issued by the Superintendent of first respondent-hospital it was stated that the petitioner's

appointment as Junior Personnel Officer was purely on temporary basis with effect from 6th January 1992 in leave vacancy of one Mr.Divekar, Junior Personnel Officer.

3. In short the grievance of the petitioner is that right from his initial appointment on 6th January 1992, he is in continuous service without a single day's break. According to him he has been given artificial break in service by several relieving orders in order to avoid appointing him in permanent post. The petitioner has given details of the appointment orders and the relieving orders issued by the first respondent. The petitioner's case is that although his initial appointment on 6th January 1992 was in leave vacancy, his subsequent appointments were not against any leave vacancy. The petitioner's services were finally terminated with effect from 3rd December 1993 by order dated 30th November 1993.

4. According to the petitioner on several occasions he has requested the first respondent to issue him permanent order of appointment. Though assurances were given by the officers of the first respondent to the petitioner that he would be soon made permanent, he was not made permanent. The petitioner has challenged the order dated 30th November 1993 as being illegal, bad in law on the ground that while issuing it the first respondent has acted arbitrarily, whimsically and

capriciously. According to the petitioner, the Government bodies and Corporations constituted by the Government should not flout the laws of the land. His case is that the Government should be a model employer and it should not have allowed the conditions of service of its employees to be governed by whims of the first respondent. According to the petitioner therefore he is entitled for declaration that the action of the respondents in terminating or discontinuing his services with effect from 3rd December 1993 under order dated 30th November 1993 is illegal, vindictive and malafide. The petitioner has prayed for setting aside of the impugned order. He has prayed that he be reinstated in service with continuity of service with full backwages and other incidental benefits.

5. We have learned counsel for the petitioner and the learned counsel for the respondents. We have gone through the Affidavit of Dr.(Mrs.) Maya G. Wankhede, Medical Superintendent of the first respondent.

6. The learned counsel for the petitioner has reiterated the stand taken by the petitioner in the petition. The learned counsel for the respondents has raised a preliminary objection. He contended that the first respondent-hospital is not a hospital belonging to State of Maharashtra or E.S.I. Corporation. The hospital employees are not governed by the service rules of Government of Maharashtra or rules framed by

the statutory corporation. He contended that the hospital is not a public sector undertaking. According to him respondent 1 does not come within the sweep of the expression "State" in order to attract Article 12 of the Constitution of India and therefore, the petition should be dismissed. He further contended that even on merits the petitioner has not made out a case for reliefs which he has prayed for.

7. In our opinion, in the facts of this case it is not necessary to go into the question as to whether respondent 1 is a State or not. The affidavit of Dr.(Mrs.) Wankhede indicates that the petitioner was employed as Junior Personnel Officer purely on temporary basis on leave vacancy. The petitioner applied for the post of Personnel-cum-Labour Officer in class-I category and prescribed age limit as per rules and regulations was 30 years. When the petitioner made his application he was over 40 years of age. He was not eligible for the said post. Nevertheless, he was given temporary post in Class-III category as Junior Personnel Officer. It is an admitted fact that the petitioner was continued on temporary post on four occasions. But the workload of the personnel department having fallen on account of the reduction in the number of beds in the hospital as well as the gradual reduction in the number of employees in proportion to the beds in the hospital, the Board of Management decided to discontinue the services of the

petitioner and accordingly his services were terminated with effect from 3rd December 1993. It is further stated that after the petitioner ceased to be in the employment of the respondent, the post occupied by him has neither been filled up nor the senior position which respondent 1 wanted to fill in was filled up as the said post was found to be redundant having due regard to the strength of employees and the number of beds required to be attended to in the hospital.

8. In view of this affidavit, no relief can be given to the petitioner. We are satisfied that the action of the respondents is not malafide or unreasonable. In the circumstances, petition is dismissed.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)